IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.2168 OF 2006

Kiran Karsandas Shah .. Applicant.
Vs.
Nandlal Ghanshyamdas Nagpal & Ors. .. Respondents.

Mr.S.K.Jain for the applicant.
Mr.Milind Desai for respondent no.1.
Mr.S.V.More A.P.P. for the State.

CORAM : D.B.BHOSALE, J.

DATED : 26TH JULY, 2006

P.C.:

. Heard learned counsel for the applicant and respondent no.1 and learned A.P.P. for the State.

2. This application is directed against the order dated 12.4.2006 rendered by the Additional Sessions Judge, Greater Mumbai. The said order was passed in the revision application filed by the applicant against the order "issue process" passed by the Metropolitan Magistrate, 20th Court, Esplanade, Mumbai dated 22.8.2005. That order is challenged solely on the ground that the applicant, who was described as proprietor in the complaint, had no concern with Chamunda Textiles. The learned counsel for the petitioner submitted that the questioned cheques were signed by accused no.2 - Jagannath Joswi as the

proprietor of Chamunda Textiles and, therefore, the complaint against the applicant need to be quashed. He also invited my attention to section 141 of the Negotiable Instruments Act to contend that the proprietary concern, does not fall within the definition of the 'firm' or 'company' and in support thereof he placed reliance upon the judgment of the Madras High Court in **N.Vaidyanathan/Deepika Milk Marketing Vs. Dodla Dairy Ltd. 2000(3) ALL MR (JOURNAL) 27**. I perused the complaint, impugned judgment and other material placed before me for consideration. The arguments advanced by the learned counsel for the applicant were in the form of defence which, in my opinion, cannot be considered at this stage. Whether the applicant is the proprietor or not ?; what is his connection with Chamunda Textiles ?; in what capacity Jagannath Joswi signed the cheques ?; will have to be considered during trial. One thing is clear from the material placed before me that the applicant has shown his address as that of Chamunda Textiles. He has received the notice on that address. He has mentioned that address in the application also. The advocate, who had replied the notice, also had mentioned that address as that of the applicant's address which, prima facie, show that he has direct connection with Chamunda Textiles. All this will have to be considered during the trial. It is open for the

parties to prove or disprove the fact that the applicant is the proprietor, and had concern with Chamunda Textile, during the trial. The averments/allegations in the complaint and the documents annexed thereto which have presumptive value in law, are prima facie, sufficient to constitute an offence under section 138 of the Negotiable Instruments Act. The judgment relied upon by the learned counsel for the applicant, in view of the peculiar facts and circumstances of the case, is of no avail to the applicant. The application is dismissed. All the contentions in the application are kept open to be raised during trial.

3. The application is disposed of.

(D.B.Bhosale, J.)